Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1956

No. ~~1052~~ 157

COMPANIA ITHACA DE VAPORES, S. A.,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Of Counsel

IN THE

Supreme Court of the United States

October Term, 1956

COMPANIA ITHACA DE VAPORES, S. A., *Petitioner,* *v.* THE UNITED STATES OF AMERICA, *Respondent.*	No.

Petition for a Writ of Certiorari to the United States Court of Claims

Petitioner herein, Compania Ithaca de Vapores, S. A., respectfully prays that a Writ of Certiorari be issued to review a decision of the United States Court of Claims on March 6, 1957 denying plaintiff recovery on a settlement agreement compromising its claim for bauxite damage to its ship while under time charter to defendant, the United States of America.

Opinion of the Court Below

The opinion of the Court of Claims is printed in the appendix hereto and is reported at 149 F. Supp. 257. The opinion of the Court of Claims denying respondent's motion for summary judgment is reported at 124 F. Supp. 627.

Jurisdiction

The decision of the United States Court of Claims was rendered for March 6, 1957.

The cause has been brought by a petition filed by the plaintiff herein against the respondent seeking recovery under a contract based on a compromise settlement agreement.

The jurisdiction of this Court to review by Writ of Certiorari the decision complained of is conferred by 28 U. S. C. Sec. 1255.

Question Presented

Whether an administrative agency of the United States (the Maritime Commission) may settle a dispute arising out of a maritime contract "subject to clearance by the General Counsel" and, after time has expired for petitioner to seek relief under the Suits in Admiralty Act, the administrative agency on its own initiative may reopen the matter and reverse itself leaving the petitioner without an enforceable remedy.

Statutes Involved

Although the statutory period within which to bring an action in Admiralty against the United States (Suits in Admiralty Act, 46 U. S. C. § 741-752) is mentioned below, it is not directly involved. However, the interpretation of the following administrative order (War Shipping Administrative Order 13, Sup. 18, revised, Amendment 1) is involved.

> "§ 4 Delegation of Authority.
>
> "(a) Authority is hereby delegated to the Director Division of Redelivery of Chartered Vessels, to authorize charterer's repairs, reconversion, removals and restoration, make tenders and settlements, execute agreements subject to clearance by the Legal Division, when the cost of the Government's obligation on any particular vessel does not exceed $10.00 per D. W. T., and to direct redelivery whenever appropriate * * *."

Statement

The petitioner, Compania Ithaca de Vapores, S. A., a Panamanian corporation, had time-chartered its vessel, the MOLDOVA, to the United States of America (War Shipping Administration) under a Warshiptime (Forflag) charter for the greater part of World War II. The survey of the vessel prior to redelivery on February 28, 1946, revealed several hundred items of damage, some attributable to heavy weather, some to collision, and others attributable to the continued use of the vessel in the bauxite (ore) trade. By negotiation the petitioner and respondent settled all of their disputes excepting petitioner's claim for damage caused the vessel while in the bauxite trade, which claim totaled $60,400.91. This failure promptly to settle resulted in protracted negotiations between petitioner's attorney and personnel of the War Shipping Administration and later the Maritime Commission. The duties of the War Shipping Administration were taken over by the United States Maritime Administration and the authority exercised by the Director passed into the hands of the Commission. Finally, in September 1947, plaintiff and the Chief, Bureau of Operations of the Maritime Commission agreed that the petitioner's claim relating to bauxite damage would be reduced to the sum of $38,540.00 and would be settled by a 50% payment. This agreement, reduced to memorandum form, was sent by the Chief, Bureau of Operations to the General Counsel of the Commission where an Assistant General Counsel on September 5, 1947 endorsed it "no legal objection". Finally, on December 8, 1947, the Maritime Commission approved the memorandum of settlement, the minutes of the Commission meeting reading:

> "After discussion, by the unanimous 'yea' vote of the members of the Commission present, the recommendations contained in the foregoing memorandum were approved *subject to clearance by the*

> *General Counsel, and the proper offices of the Commission were authorized and directed to take any and all actions necessary and proper to carry the action of the Commission as above set forth fully into effect.*" (R. p. 20).

On the following day, December 9, 1947, the Secretary of the Commission addressed a memorandum to the General Counsel reading as follows:

> "At a meeting on December 8, 1947, the Commission approved the attached memorandum dated September 15, 1947, from the Chief, Bureau of Operations, subject to clearance by you.
>
> "Kindly furnish me with your clearance as soon as possible." (R. p. 20)

This approval of the Commission was orally communicated to the petitioner's attorney.

Shortly after the Commission's approval on December 8, Commissioner McKeough, who had not been present and who had not voted on the matter, advised the General Counsel that he was asking the Commission to reconsider its action. The matter was placed on the Commission's agenda for January 9, 13, 20, February 4, 24 and March 2, 1948, respectively, and at each meeting was "laid over". Finally, on March 5, 1948, the Commission again acted, reversing its former action, and disapproved the settlement.

On February 28, 1948 the petitioner's time to commence an action, based upon the charterparty dispute, against the respondent in admiralty under the Suits in Admiralty Act had expired. Although such an action was later commenced, it was properly dismissed by the United States District Court for the Southern District of New York as having been untimely brought.

Based on the foregoing, the petitioner commenced its action against the respondent in the United States Court of Claims. Upon the respondent's motion for summary judg-

ment, on the contention that the claim was maritime in nature and therefore not within the jurisdiction of the Court of Claims, that Court, in its opinion, stated:

> ". . . if it (petitioner) is able to establish a binding agreement for the settlement of its claim, finally approved by the Commission, this court would have jurisdiction of an action brought on that agreement."

On March 6, 1957 the Court of Claims dismissed plaintiff's action on the grounds that the foregoing facts did not constitute a binding settlement agreement on the part of the parties. From that dismissal this petition is submitted.

Argument

The action of the Maritime Commission on December 8, 1947 resulted in the substitution of civil contract for a maritime contract.

Prior to the action of the Maritime Commission on December 8, 1947, the petitioner had an enforceable claim in admiralty against the respondent under the Suits in Admiralty Act based upon respondent's failure to fulfill its obligations under the charterparty—a maritime contract. But the action of the Maritime Commission in approving the settlement resulted in the creation of a new civil (as distinct from admiralty) contract. That this is so is supported by the opinion in *Fox* v. *Patton*, 22 Fed. 746, wherein the court said at pp. 746, 747:

> "The only foundation of this action, therefore, is the new and independent promise, on their part, alleged in the libel, to pay the libellants for the previous debt of the ship and of her owners. It does not appear whether or not the debt of the ship and of her owners was discharged, or intended to be discharged, by this new and independent promise of the respondents. If it was not discharged, the libellants'

> remedy against them remains still available. If the former debt was discharged, then it is a case of novation, in which the only relation of the prior debt to the new obligation is that the former furnishes the consideration of the latter. This original consideration, though it is itself a maritime consideration, is not sufficient to make such a new and independent contract a maritime contract."

Approval Subject to Clearance is sufficient approval to bind the Maritime Commission.

A similar situation to the present one occurred in *Adams, et al. v. U. S.*, 101 F. Supp. 956; aff'd 201 F. 2d 150. The government raised exactly the same defense in the *Adams* case as in this; that clearance by the Legal Division was a prerequisite to the existence of an agreement binding the United States. The Director of the Division of Redelivery of Chartered Vessels was authorized by the War Shipping Administration, pursuant to Administrative Order 13, Sup. 18 (revised), Amendment 1, to conclude settlements "subject to clearance by the Legal Division." The Court in the *Adams* case found as follows, 101 F. Supp. at p. 961:

> "It must be held that the words 'subject to clearance by the Legal Division' imposed no requirement of approval of that division to make a settlement by the director binding upon the United States but are only a directive to him to seek the assistance of the Division in the drafting and execution of formal agreements."

In this case, as in the *Adams* case, any other interpretation of "clearance" by General Counsel or the Legal Division would be quite unreasonable. The clearance referred to was obviously for the purpose of releases, vouchers and the like. Inasmuch as the General Counsel had already reviewed this memorandum on at least three separate occasions, it would appear unreasonable for the Maritime Com-

mission to require yet another review of the settlement by the General Counsel.

Plaintiff knew that the compromise had been approved by the Commission and, furthermore, that it previously had received the approval of the General Counsel's office. The instant that agreement was approved by the Commission the settlement was effective. See *Braun* v. *U. S.* (Ct. of Claims (1942)) 46 F. Supp. 993, 1005 which states:

> "The 'implied agreement' contemplated * * * is not an agreement 'implied in law,' * * * but an agreement 'implied in fact' founded upon a meeting of minds, which although not embodied in an express contract, is inferred as a fact from conduct of the parties showing in the light of the surrounding circumstances, their tacit understanding."

More than two years after the claim had been filed, the Commission sought to rescind an agreement which had been approved by all concerned. At any time prior to the meeting of December 8, 1947, any member of the Commission or its staff could have raised any and all objections to the agreement as embodied in the memorandum dated September 15, 1947, which in turn was a word-for-word copy of the agreement concluded in December 1946. At no time was such objection made. After the meeting on December 8, the Commission could no longer rescind that agreement.

The law is quite clear that the acceptance of any agreement may be by such ratification alone as well as by formal written notice. *The Atlanta*, 82 F. Supp. 218, 234. Similarly, the agreement as embodied in the memorandum was sufficient writing for formal application without the necessary releases, vouchers and other documents necessary for the final passing of the money. *Adams* v. *U. S.*, supra; *Morgan* v. *Patillo*, C. A. 5 1924, 297 F. 140.

There is no doubt that the acceptance by plaintiff and the Maritime Commission, on December 8, 1947 of the

terms of the agreement for settlement established a binding agreement, under which the petitioner is entitled to the relief herein sought.

Conclusion

Plaintiff is entitled to recover $19,270.00 representing settlement on 50% basis of plaintiff's claim for bauxite damage to the S. S. MOLDOVA by virtue of the action of the Maritime Commission action of December 8, 1947, and petitioner prays that certiorari be granted.

Respectfully submitted,

WILBUR E. DOW, JR.

Of Counsel:

DANIEL L. STONEBRIDGE

Wilbur E. Dow

Appendix I

In the United States Court of Claims

No. 49813

(Decided October 5, 1954)

COMPANIA ITHACA DE VAPORES, S. A. v. THE UNITED STATES

Mr. Daniel L. Stonebridge for plaintiff. *Messrs. William A. Wilson* and *Doir & Symmers* were on the briefs.

Mr. Leavenworth Colby, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for defendant. *Mr. Hubert H. Margolies* was on the brief.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

WHITAKER, *Judge*, delivered the opinion of the court:

This case is before the court on defendant's motion for summary judgment.

Plaintiff chartered its ship, the *SS. Moldova*, to the defendant on the 3d of April 1942, under a time charter. It is alleged that when the defendant redelivered the ship to plaintiff it was not "in like good order and condition" as it had been when plaintiff delivered it to the defendant, and that the cost of putting it in such condition was $60,400.91. For this sum it sues.

Subsequently, plaintiff filed an amended petition, by which it added a paragraph, reading as follows:

> Plaintiff made due and timely demand of the United States Maritime Commission for payment of the claim as above set forth. The United States Maritime Commission through its duly authorized agents gave admin-

istrative approval to compromise of the claim as presented. Thereafter, and after expiration of the preiod of time within which plaintiff might have commenced suit against the United States, the United States Maritime Commission withdrew its administrative approval for compromise of the claim, and thereafter failed and refused to make payment of all or any part of the said claim, and continues to so fail and refuse.

The claim asserted in the original petition is without the jurisdiction of this court, under our decision in *Polar Compania De Navegacion, Ltda., as owner of the steamship Penelopi, v. The United States*, C. Cls. No. 54-52, this day decided.

In the quoted paragraph of the amended petition plaintiff evidently intends to ground its action on an account stated, or, more properly, a compromise agreement. In its brief it says:

> The present action is brought, not upon the damage cause of action under the charter party referred to, but upon the settlement agreement reached between plaintiff's attorneys and defendant acting through the War Shipping Administration and the Maritime Commission.

It says that this court has jurisdiction grounded upon such an agreement.

To its final memorandum in the case it sets forth the affidavit of Anthony N. Zock, who was an associate of the firm of Dow & Symmers, plaintiff's attorneys. Mr. Zock states that he entered into an agreement with Mr. Arthur Ferris, an attorney in the legal division of the War Shipping Administration, to settle plaintiff's claim for "50 percent of the cost of repairing the damage." He says the matter was then referred to a Captain Scott, of the War Shipping Administration, to compute the cost of repairs, and thereafter Commander Reynolds, an assistant of Captain Scott, "prepared a memorandum accepting the agreement for the signature of Mr. Gerard Helmbold * * * to be submitted to the Commission for a formal meeting for their approval."

He further says that Mr. Helmbold signed the agreement in late 1946 or early 1947, and that the matter came before the Maritime Commission in September 1947, and upon information and belief, he says, "the Commission approved unanimously the settlement agreement * * *." Then the Maritime Commission, he says, referred the matter to its General Counsel "for finalization." The General Counsel's office recommended the disapproval of the agreement, and shortly thereafter the Maritime Commission rescinded it. This, he says, was immediately after the expiration of the statute of limitations on an action on the charter party under the Suits in Admiralty Act, *supra*.

There are defects in plaintiff's pleading, but if it is able to establish a binding agreement for the settlement of its claim, finally approved by the Commission, this court would have jurisdiction of an action brought on that agreement. Since there is a dispute about the facts connected with the alleged agreement, it is obvious that defendant's motion for summary judgment must be overruled.

Plaintiff is given leave to amend the above-quoted paragraph of its petition. The cause will proceed upon the cause of action stated. Defendant is allowed 10 days to answer plaintiff's call on the Maritime Commission.

It is so ordered.

LARAMORE, *Judge*; MADDEN, *Judge*; LITTLETON, *Judge*; and JONES, *Chief Judge*, concur.

Appendix 2

In the United States Court of Claims

No. 49813

(Decided March 6, 1957)

COMPANIA ITHACA de VAPORES, S. A.
v. THE UNITED STATES

Mr. William A. Wilson for plaintiff. *Mr. Robert J. Nicol* was on the brief.

Mr. Charles S. Haight, Jr., with whom was *Mr. Assistant Attorney General George Cochran Doub*, for defendant. *Mr. Leavenworth Colby* was on the brief.

OPINION

WHITAKER, *Judge*, delivered the opinion of the court:

Plaintiff's amended petition is based upon an alleged settlement with the Maritime Commission of its claim for damage to its vessel while it was under time charter to the defendant. The question now presented to us is whether or not defendant's obligation to respond in damages, which is of course maritime in nature, has been supplanted by a contract to pay a certain sum, which gives this court jurisdiction.

Before redelivery of plaintiff's vessel, the *SS. Moldova*, it was surveyed, and redelivery specifications embodying 272 items were prepared and agreed upon by representatives of the plaintiff and the War Shipping Administration, with the exception of plaintiff's claim for damage to its vessel as the result of the carriage of bauxite. All of plaintiff's

claims have been paid except this one. For this one it now sues for $60,106.91. While plaintiff's petition has not been so amended, we suppose we should treat it as having been amended to sue for $19,270, the amount of the settlement agreed to by it, and which it alleges the Maritime Commission agreed to.

The parties negotiated for the settlement of plaintiff's claim for bauxite damage, and finally reached an agreement with the Chief, Bureau of Operations. Accordingly, this official presented to the Maritime Commission a memorandum dated September 15, 1947, stating that the parties had reached an agreement as to the items clearly chargeable to the bauxite damage, and recommending the payment of 50 percent of the total amount of the items agreed upon, in full settlement of plaintiff's claim. This 50 percent amounted to $19,270. The Assistant General Counsel endorsed the memorandum "no legal objection."

After discussion of the memorandum, it was referred by the Commission to the General Counsel for review and report. He suggested that the memorandum be rewritten to show that the date of defendant's obligation for this damage arose on the date of the contract, rather than on the date of the delivery. As rewritten, it was again presented to the Maritime Commission.

The minutes of the Commission, dated December 8, 1947, recited:

> After discussion, by the unanimous "yea" vote of the members of the commission present, the recommendations contained in the foregoing memorandum were approved *subject to clearance by the General Counsel, and the proper officers of the Commission were authorized and directed to take any and all actions necessary and proper to carry the action of the Commission as above set forth fully into effect.* [Italics ours.]

On the following day, December 9, 1947, the Secretary of the Commission addressed a memorandum to the General Counsel reading as follows:

At a meeting on December 8, 1947, the Commission approved the attached memorandum dated September 15, 1947, from the Chief, Bureau of Operations, subject to clearance by you.

Kindly furnish me with your clearance as soon as possible.

Plaintiff's counsel was advised of the action taken by the Commission by someone in the office of the Secretary of the Commission, on the occasion of his visit to the Secretary's office on December 8, 1947, to ascertain the action taken.

The plaintiff claims that this action of the Commission was an approval by it of the agreement entered into between plaintiff and the Chief, Bureau of Operations, and constituted a novation, the substitution of a contract to pay a definite amount for and in lieu of its original claim for damages, upon which contract plaintiff has the right to sue in this court.

We do not think this position can be sustained.

The Commission's approval of the settlement was not unequivocal. It was approved, "subject to clearance by the General Counsel,"—whatever that may mean. Before the General Counsel had cleared it, Commissioner Raymond S. McKeough, who was not present when the Commission met on December 8, 1947, addressed a memorandum to the General Counsel advising him that he was asking the Commission to reconsider its action. At the next meeting of the Commission the matter was again discussed, but was "laid over" without action. The memorandum was later presented to the Commission at its meetings on January 9, January 13, January 20, February 4, February 24, and March 2, 1948, and at each meeting was "laid over." Finally, on March 5, it was again presented to the Commission, accompanied by a memorandum from the General Counsel recommending that plaintiff's claim be disallowed. This recommendation was approved by the Commission, and the proposed settlement was disapproved.

We are not sure just what the Commission meant by its approval of the agreement by the plaintiff and the Chief of

the Bureau of Operations, "subject to clearance by the General Counsel"; but, whatever the Commission may have meant by this, it is clear that no final action had been taken approving the settlement and, therefore, the Commission has never promised to pay the amount agreed upon. Since there was no promise to pay, plaintiff's only right of action is on its original claim; there was no promise upon which it can sue.

If we assume, as plaintiff contends, that the phrase, "subject to clearance by the General Counsel," means only, subject to his putting the agreement into fornial legal terminology, still, there was no promise to pay until this had been done. Even if the phrase meant what plaintiff contends, no promise to pay would have arisen until after counsel had prepared the necessary documents setting forth the agreement and a promise to pay, in consideration of the release by plaintiff of its claim against the defendant, or whatever else counsel may have thought necessary and proper to include in the documents. As we have seen, this was never done.

The most that plaintiff can make out of the action of the Commission on December 8, 1947, was an agreement on the amount of the liability and of the amount payable in satisfaction thereof; but the terms and conditions on which payment would be made had not been specified. Therefore, plaintiff had no new promise upon which it can sue, and can avail itself of the purported agreement only in an action upon its original claim for damage to its vessel while it was under charter to plaintiff.

This court has no jurisdiction of such an action, exclusive jurisdiction having been vested in the district courts under the Suits in Admiralty Act (41 Stat. 525; 46 U. S. C. sec. 742).

The foregoing is supported by the principle of *M. & J. Tracy, Inc.* v. *United States*, 125 C. Cls. 70, cert. den. 346 U. S. 854; *Sinclair Refining Co.* v. *United States*, 129 C. Cls. 474; *Isthmian S. S. Co.* v. *United States*, 131 C. Cls. 472; *Fox* v. *Patton*, 22 Fed. 746; and the case upon which plaintiff relies, *Adams* v. *United States*, 101 F. Supp. 956, affirmed

(2d Circuit, 1953) 201 F. 2d 150. See also *United States* v. *Massey*, 5 F. 2d 1013.

It results that plaintiff's petition must be dismissed.

It is so ordered.

LARAMORE, *Judge*; and JONES, *Chief Judge*, concur.

MADDEN, *Judge*, dissenting.

I see nothing in this case except a refusal by the Maritime Commission to do what it had contracted to do, because it changed its mind after it had made the contract. Private persons and private enterprises do not have the privilege of changing their legal obligations, by changing their minds. It is apparent that clearing by the General Counsel was nothing but a formal procedural step, and there is no indication whatever that the General Counsel found anything wrong with the contract. The member of the Commission who was absent when the Commission accepted the plaintiff's offer finally convinced the Commission that it should repudiate its contract, and the General Counsel had nothing to do with that action. I think what the Commission did was a plain breach of contract for which there was no moral nor legal justification. The court is aware, of course, that the relegation of the plaintiff's claim to its status as a maritime contract is a complete denial of relief to the plaintiff, since the Statute of Limitations has run on the maritime contract claim.

LITTLETON, *Judge*, joins in the foregoing dissenting opinion.

FINDINGS OF FACT

The court, having considered the evidence, the report of Commissioner Marion T. Bennett, and the briefs and argument of counsel, makes the following findings of fact:

1. The *SS. Moldova*, owned by plaintiff, Compania Ithaca de Vapores, S. A., a Panamanian corporation, was chartered under WARSHIPTIME (Forslag) charter to defendant, through

the War Shipping Administration, on April 3, 1942, at a monthly rate of hire of $30,450. The vessel was employed by the defendant in the bauxite trade.

2. Prior to redelivery to plaintiff on February 28, 1946, the *SS. Moldova* was surveyed and redelivery specifications embodying 272 items were prepared and agreed upon by representatives of the plaintiff and the War Shipping Administration. These items covered claims for damage as a result of the carriage of bauxite, collision and heavy-weather damage, removal of certain defense installations and restoration. All of these claims have been settled between the parties except those relating to bauxite damage for which plaintiff claims $60,400.91 in this suit.

3. In its amended petition, filed July 1, 1954, plaintiff alleges that its representatives entered into a compromise agreement with defendant for settlement of the bauxite claims but that after expiration of the time within which plaintiff might have commenced suit against the United States the Maritime Commission withdrew its administrative approval of the compromise and refused to pay plaintiff thereunder. In its opinion of October 5, 1954 (129 C. Cls. 745), on defendant's motion for summary judgment, this court authorized amendment of the plaintiff's petition and stated that if plaintiff is able to establish a binding agreement for the settlement of its claim, finally approved by the Commission, the court would have jurisdiction of an action brought on that agreement. The court directed that the "cause will proceed upon the cause of action stated." There has been no further amendment of the petition.

4. After disallowance of the bauxite damage claim plaintiff's attorneys conferred on numerous occasions with representatives of the War Shipping Administration and Maritime Commission, and submitted a brief in support of plaintiff's position. The charter, agency and traffic counsel of the Maritime Commission indicated defendant would make a

settlement on a basis of 40 percent of the claim but this was rejected by plaintiff's attorneys.

5. On December 19, 1946, the charter, agency and traffic counsel of the Commission in an office memorandum to the head of the Division of Redelivery of Chartered Vessels, stated that it was his opinion that plaintiff's position had substantial merit although he believed defendant's position would prevail in the event of litigation. The memorandum indicated a further belief that a settlement on the basis of 50 percent of the cost of repairs would be in the Government's interest. This sum would be $19,270. The counsel indicated such a settlement would be without legal objection.

6. On August 5, 1947, the chief of the Bureau of Operations, Maritime Commission, presented to the Commission a memorandum dated June 27, 1947, entitled "SS CONSTANTINOS H. MOLDOVA and EUREKA—Authorization to Settle Outstanding Claims for Repairs, Removals and Restoration on Redelivery from Time Charter." The memorandum was sent back with the direction that it be resubmitted in accordance with the then current appropriation act.

7. At the meeting of the Maritime Commission on October 27, 1947, the chief of the Bureau of Operations presented to the Commission a memorandum dated September 15, 1947, which had the same title as the one referred to in the finding above. This memorandum reviewed the nature of the use of the *Moldova*, the claims of damages, and reported that the chief of the Redelivery of Chartered Vessels Branch had conferred with the owner's representatives on the claims submitted and had reached agreement as to which items were clearly chargeable to the excessive usage due to bauxite and that the owner's agents had agreed to accept such figures. The memorandum recommended that the Commission find that certain charter redelivery obligations were then outstanding and unpaid and that the settlement on the basis

of payment by the defendant of 50 percent of the amount of the agreed claim would be reasonable and proper. It was further recommended that the Commission authorize the chief of the Redelivery of Chartered Vessels Branch, Operating Contracts Division, to enter into agreements with the plaintiff by which the defendant would be released from all claims on the *SS. Moldova* in consideration of payment by the defendant of the amount of $40,436.07, of which amount $19,270 constituted the 50 percent proposed settlement of the bauxite damage claim. The memorandum bore at the bottom thereof the following endorsement:

No Legal Objection.

(Signed) FRANCIS B. GOERTNER,
Assistant General Counsel.

By: METZ

After discussion the memo was referred to the general counsel for review and report to the Commission.

8. The general counsel on November 4, 1947, referring to the memorandum of September 15, 1947, suggested that the chief of the Bureau of Operations rewrite it in accordance with the general counsel's determination that the date of the contract rather than the date of redelivery should govern in determining the date the obligation arose. This had been done on another vessel and the suggestion would have made the practice uniform. The general counsel suggested that the rewritten memorandum be submitted to the Commission.

9. The minutes of the Maritime Commission of December 8, 1947, contain the following statement:

> Pursuant to action of the Commission at the special meeting on October 27, 1947 (1st Session), there was presented the following memorandum dated September 15, 1947, from the Chief, Bureau of Operations, as revised in accordance with memorandum from the Gen-

eral Counsel to the Chief, Bureau of Operations, dated November 4, 1947, which is in the files of the Commission:

Following the statement quoted above the minutes set forth the memorandum of September 15, 1947, as described in finding 7. Thereafter the minutes contain the following statement:

> After discussion, by the unanimous "yea" vote of the members of the Commission present, the recommendations contained in the foregoing memorandum were approved subject to clearance by the General Counsel, and the proper officers of the Commission were authorized and directed to take any and all actions necessary and proper to carry the action of the Commission as above set forth fully into effect.

The Secretary of the Commission, on December 9, 1947, gave a memorandum to the general counsel, stating:

> At a meeting on December 8, 1947, the Commission approved the attached memorandum dated September 15, 1947, from the Chief, Bureau of Operations, subject to clearance by you.
>
> Kindly furnish me with your clearance as soon as possible.

10. Plaintiff's counsel was advised by an unidentified person in the office of the Secretary of the Commission of the action taken by the Commission on December 8, 1947, when he visited the office on that date to inquire.

11. Commissioner Raymond S. McKeough was not present at the time of the action of the Commission on December 8, 1947. On December 18 he addressed a memorandum to the general counsel advising that he was asking the Commission to reconsider its action upon his return. He addressed such a request to the Secretary of the Commission. The memorandum of September 15, 1947, which had been approved on December 8, 1947, subject to clearance by the general counsel was, accordingly, brought up at the meeting of the Commission on January 6, 1948. After discussion the matter was "laid over" without action.

12. The memorandum from the chief of the Bureau of Operations, dated September 15, 1947, was presented to the Maritime Commission at meetings during 1948 on January 9, January 13, January 20, February 4, February 24 and March 2, and on each occassion the matter was "laid over."

13. At the Maritime Commission meeting of March 5, 1948, there was again presented to the Commission the memorandum dated September 15, 1947, which was the subject of Commission action on December 8, 1947. At this meeting the Commission also had before it a memorandum dated March 4, 1948, from the general counsel who recommended that the claims under consideration be disallowed. After discussion, the memorandum of September 15, 1947, was disapproved and the recommendations of the general counsel were approved.

14. Through its attorneys, plaintiff transmitted to the chief of the Division of Claims, Maritime Commission, on November 29, 1948, a public voucher claiming the amount of $19,270, equal to one-half of the cost of repairing the bauxite damage to the *SS. Moldóva*. By letter dated August 22, 1949, the defendant, through the Secretary of the Maritime Commission, advised that the Commission had directed that denial of plaintiff's claim for bauxite damage to the *SS. Moldóva* would not be reconsidered and returned the voucher.

15. The evidence establishes and it is found that plaintiff knew that any compromise of its bauxite damage claim had to receive the approval of the Maritime Commission and its general counsel, that such approval was never given and that no subordinate officials of the Commission had any authority to bind the Commission.

16. The opinion of the Court of Claims in this case on October 5, 1954, held that the claim asserted in the original petition, filed September 12, 1950, is without jurisdiction

of this court under the authority of *Polar Compania de Navegacion, LTD., v. as owner of the Steamship Penelopi v. The United States* (129 C. Cls. 471). On August 3, 1951, plaintiff filed a suit in the United States District Court in the Southern District of New York, Adm. 169-241, praying for judgment in the same amount as in its original petition in the Court of Claims and making the same allegations. The case was dismissed for failure to comply with the two-year statute of limitations of the Suits in Admiralty Act.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes that as a matter of law plaintiff is not entitled to recover, and its petition is therefore dismissed.